

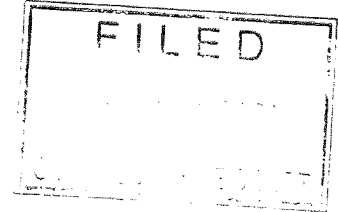
IN THE COURT OF APPEALS OF IOWA

No. 1-887 / 00-1714
Filed December 28, 2001

IN RE THE MARRIAGE OF BRINDA KAY SIMON
AND THOMAS ANTHONY SIMON

Upon the Petition of
BRINDA KAY SIMON,
Petitioner-Appellee,

And Concerning
THOMAS ANTHONY SIMON,
Respondent-Appellant.



Appeal from the Iowa District Court for Mahaska County, Richard J. Vogel,
Judge.

The respondent appeals the alimony and visitation provisions of the
parties' dissolution decree. He also appeals an award of trial attorney fees to
Brinda Simon. **AFFIRMED.**

Michael Brice of Brice and Smith, Oskaloosa, for appellant.

Greg Life, Oskaloosa, for appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

Thomas Simon appeals from the alimony and visitation provisions of the parties' dissolution decree. He also claims the trial court abused its discretion in awarding attorney fees to Brinda Simon. We affirm.

I. Background Facts and Proceedings.

Thomas and Brinda Simon were married in 1993. The parties separated during the summer of 1999, and Brinda filed a petition to dissolve their marriage. Their marriage was dissolved by decree entered in August of 2000. At the time of the dissolution, Thomas was thirty-nine and Brinda was thirty-two.

Two children are considered the children of this marriage. They are: Rachel, born in March 1993; and Lucas, born in February 1997. Although Thomas is listed on Rachel's birth certificate as her father, he is not her biological father. Thomas has acted as Rachel's father since her birth and both parties want him to continue in this role. Thomas wants to pay child support and have visitation rights with Rachel. Brinda has a third child from a previous marriage, Joel, whose interests are not affected by these proceedings.

Thomas has a four-year degree and works in the computer software field. The trial court found he had an average annual salary of \$60,000. He brought considerable assets to the marriage.

Brinda dropped out of high school in the eleventh grade. She worked as a nurse's assistant before Rachel was born in 1993. After Rachel's birth she quit work to become a full-time mother. This decision was made jointly between Thomas and Brinda. Brinda did not work during the parties' marriage and was

unemployed at the time of trial. She and the children currently reside in her parent's home in Fremont.

Which party should serve as the primary caretaker of the children was a matter of serious contention during the pendency of this matter; however, a few days before trial, Thomas decided not to contest primary care with Brinda. The parties were unable to resolve other issues and the case proceeded to trial.

The district court divided the parties' property and debts. The court granted Brinda rehabilitative alimony in the amount of \$500 per month for a period of four years. Child support was set at \$1,029 per month. The trial court established a detailed schedule for Thomas to visit Rachel and Lucas. The court also awarded Brinda \$4,000 in trial attorney fees.

On appeal, Thomas contends the alimony award is excessive in amount and duration. He also takes issue with the trial court's visitation schedule and contends Brinda should not have been awarded trial attorney fees.

II. Scope of Review.

Our review of this equitable matter is de novo. See Iowa R. App. P. 4. This standard requires us to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa Ct. App. 1997). We recognize the value in listening to and observing parties and witnesses. See Iowa R. App. P. 14(f)(7). We accord the trial court considerable latitude in resolving disputed claims and will disturb a ruling "only when there has been a failure to do equity." *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996).

III. Alimony.

Thomas contends no spousal support award was warranted under the circumstances of this case. He argues an alimony award is inappropriate because of the short length of the marriage. He claims rehabilitative alimony is unwarranted because he believes it is unlikely Brinda will use the award toward its intended goal. He also contends Brinda has sufficient funds available from her property settlement to adequately pay for additional education without the assistance of alimony. In the alternative, Thomas contends the trial court's award is excessive, and should be limited to two years duration.

Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. See *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa Ct. App. 1997). We consider the length of the marriage, age, health, earning capacities, levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998).

We have previously summarized various categories of alimony and the purposes they serve.

Alimony is awarded to accomplish one or more of three general purposes. Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and training. Its objective is self-sufficiency. An award of reimbursement alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhanced the future earning capacity of the other. Traditional alimony is payable for life or for so long as a dependent spouse is incapable of self-support. The amount of alimony awarded in its duration will differ according to the purpose it is designed to serve.

In re Marriage of O'Rourke, 547 N.W.2d 864, 866-67 (Iowa Ct. App. 1996) (citations omitted).

Under the facts presented by this case, we find a period of rehabilitative alimony is warranted. The alimony awarded here reflects the disparity in the parties' relative needs in earning capacities upon the dissolution of their marriage. See *In re Marriage of Hitchcock*, 309 N.W.2d 432, 436-37 (Iowa 1981). Brinda has a limited educational background, minimal job training or skills, and very little work experience. She has been absent from the job market, in any capacity, since 1993. The district court obviously believed a period of rehabilitative alimony would afford Brinda the opportunity to improve her workplace skills and her financial circumstances. We find the court's award of \$500 per month for forty-eight months, equitable under the circumstances.

IV. Visitation

Thomas contends the trial court should have awarded him more frequent and less burdensome visitation. The district court awarded Thomas visitation on alternate weekends, every Wednesday, alternate holidays, and half of Christmas and spring breaks. The court also awarded Thomas four weeks of summer visitation in 2001, five weeks in 2002, and six weeks in 2003 and thereafter. Summer visitation was awarded in one-week intervals, not consecutively. The visitation schedule is consistent with expert testimony offered at trial.

Thomas asked the district court for additional summer visitation and requested the responsibility for transportation be reallocated. Upon de novo review of the record, we conclude the district court's visitation schedule is

reasonable and that it serves the statutory goal of assuring Thomas “the opportunity for maximum continuing physical and emotional contact” with the children. Iowa Code § 598.41(1)(a). Accordingly, we affirm the schedule established by the district court. In doing so, we note again that trial courts must have a certain range of discretion within which to fashion visitation orders. As long as an order provides for visitation that is equitable and reasonable under the particular facts and circumstances of a case, it should be affirmed.

V. Attorney Fees.

Brinda was awarded \$4,000 in attorney fees by the trial court. On appeal, Thomas claims the trial court should not have awarded attorney fees to Brinda. Brinda maintains her attorney fees were increased unnecessarily because Thomas contested the issue of custody until immediately prior to trial. Iowa trial courts have considerable discretion in awarding attorney fees. *Gonzalez*, 561 N.W.2d at 99. To overturn an award the complaining party must show the trial court abused its discretion. *Id.* We find no abuse of discretion in the trial court’s decision and accordingly affirm its award of trial attorney fees.

Brinda requests an award of appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court’s discretion. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request is obligated to defend the trial court’s decision on appeal. *Id.* Under the facts of this case, we determine Brinda should pay her own appellate attorney fees. Costs of this appeal are taxed to Thomas.

AFFIRMED.